

species?). Accordingly, claims 1-3 and 5-18 that are readable on the elected species are being examined on the merits. Reconsideration of the outstanding rejections is hereby requested in view of the following remarks.

THE INTERVIEW

Supervisor patent examiner Bruce Campbell is thanked by the applicant for a most cordial and helpful telephone interview granted on August 15, 2005. During the course of the interview the applicant's representative indicated that an election of species had been requested by the examiner on December 14, 2004, and made by the applicant on March 14, 2005. The applicant's representative pointed out that in the outstanding Office Action, however, the examiner incorrectly referred to "the restriction requirement of 12/14/2005". Mr. Campbell concurred, and agreed that, in fact, this application should not be subjected to a requirement for restriction, and withdrew the language referring to it as being incorrect. Both the attorney and Mr. Campbell agreed that the election of species previously made by the applicant rendered this application in compliance with the rules for applications entering U.S. national phase through the PCT system and that, upon a finding of allowable subject matter the remaining species would be re-incorporated into the examined claims.

THE ANTICIPATION REJECTION

Claims 1-3, 5-8 and 11 stand rejected under 35USC1.1.02(e), allegedly as being anticipated by US Patent 6,057,297 ("the '297 patent"). This ground of rejection is emphatically traversed by the applicant.

The '297 patent is different from the claimed invention, and fails to render it obvious. The '297 patent discloses "synthetic peptidomimetics" capable of inhibiting metalloproteinases obtained from snake venom, e.g. Crotalidae. These are disclosed as suitable for treating pathologic conditions associated with activation of endogenous metalloproteinases in mammals. See, for example, Abstract; Col 3, ls. 27-48; Col 5, ls 7-10; Col 18, ls. 20-29 of the '297 patent.

The claimed invention, in contradistinction, is directed to a fraction isolated from the venom of a snake, e.g. Crotalidae, which has the characteristics of a fraction purified from the venom by Mono Q ion-exchange chromatography. The fraction of the claimed invention is substantially non-toxic and has analgesic activity associated with a metalloproteinase after a lag period. Clearly, the prior art reference fails to describe or suggest all the characteristics of the claimed product.

The examiner is in error when he indicated that the '297 patent anticipates the claimed pharmaceutical composition and method of use. The examiner appears to have mistaken "metalloproteinase" enzymes with "metalloproteinase enzyme inhibitors". Clearly, these two classes of products are different and have different activities. Whereas the '297 patent relates to enzyme inhibitors (see, col 5) the claimed fraction comprises a metalloproteinase enzyme obtained from snake venom. The syhtetic peptidomimetic compounds of the '297 patent are neither non-toxic nor do they have analgesic activity evidenced after a lag period. See, Col. 1, l.48 ff. over to Col.2, l. 52. Moreover, the '297 patent fails to contain a description or suggestion that would lead an artisan to the presently claimed product and method of use.

The examiner is therefore invited to withdraw this rejection.

THE OBVIOUSNESS REJECTION

Claims 1-3 and 5-18 stand rejected under 35USC 1.103(a), allegedly as being obvious over the '297 patent. This ground of rejection is also emphatically traversed.

The '297 patent was described above as was its inability to either anticipate or render the claimed invention obvious. Clearly the '297 patent provides neither a description nor a suggestion that an artisan could follow to attain the presently claimed product and method of use. The examiner appears to have mixed pars with apples, which is not permitted under the U.S. Patent Laws.

In view of the above remarks the claimed invention is believed to be free of this ground of rejection as well. The examiner is thus invited to withdraw this rejection.

THE INDEFINITENESS REJECTION

Claims 1-3 and 5-18 stand rejected under 35 USC 1.112, second paragraph, allegedly as being indefinite. This rejection is traversed.

Claims 6-7 have been canceled, and the spelling corrected in claims 1, 3 and 14. This rejection is therefore moot.

THE ELECTION OF SPECIES

The applicant has elected a species for searching purposes only, and believes that the language regarding a requirement for restriction is inappropriate. The supervisory patent examiner concurred with the applicant during the course of the interview discussed above.

MAILBOX NON-FINAL RESPONSES
Attorney Docket No. 24871

An election of species having been made, and the art of record having been misapplied or failing to anticipate or render the claimed invention obvious the pending claims are believed to be in condition for allowance. Moreover, when allowable subject matter is found herein the examiner is invited to reincorporate the non-selected species into the allowed claims.

This application is thus believed to be in condition of allowance. Early notice to that effect is earnestly solicited.

Respectfully submitted,
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